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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

IN RE HIGH-TECH EMPLOYEE  
ANTITRUST LITIGATION  
  
THIS DOCUMENT RELATES TO:  
  
ALL ACTIONS.

Master Docket No. 11-CV-2509-LHK

**DECLARATION OF FRANK M.  
HINMAN IN OPPOSITION TO  
ADMINISTRATIVE MOTION**

1 I, Frank M. Hinman, declare:

2 1. I am a partner at Bingham McCutchen, counsel to Intel Corporation in this matter.  
3 I have personal knowledge of the facts stated in this declaration and, if called, could and would  
4 testify competently to them.

5 2. It is not clear what point Mr. Glackin is trying to make in paragraph 2 of his  
6 Declaration regarding the briefing schedule and our discussions on November 14. The only  
7 reason Defendants may have “envisioned” that Plaintiffs would respond to the *Daubert* motion  
8 along with their class certification reply, and that Defendants would then have a further reply on  
9 the *Daubert* motion, is that we were willing to double the time Plaintiffs would have to respond  
10 from two weeks to four. Under the normal briefing schedule on the *Daubert* motion, both the  
11 opposition and reply would be due *before* Plaintiffs’ class certification reply. Mr. Tubach and I  
12 explained that fact in one of our conversations with Plaintiffs that day. When Plaintiffs said they  
13 didn’t want Defendants to have “the last word,” we offered them additional time to oppose the  
14 *Daubert* motion (until November 29, later extended to December 3), and agreed that Defendants  
15 would file a reply brief *at the same time* as Plaintiffs’ reply on class certification (December  
16 10). Thus, under both the normal briefing schedule and Defendants’ proposed briefing schedule,  
17 Defendants would not have had the last word, and all briefing related to class certification would  
18 still have been completed by December 10, as the Court’s schedule contemplates. As we  
19 explained to Plaintiffs, Defendants did not know we would be filing a *Daubert* motion when the  
20 schedule was set, because we could not have known that Dr. Leamer’s opinions, as expressed in  
21 his report and October 26 deposition testimony, would fail to meet the standards for  
22 admissibility. Finally, with respect to *Ellis*, I stated that the Ninth Circuit opinion and the other  
23 cases cited in Defendants’ Request for an Evidentiary Hearing support the fact that a *Daubert*  
24 motion is the way that *Daubert* challenges are typically and properly brought. In my experience  
25 that is how they are always brought.

26 3. For the class certification opposition brief, the first draft and every draft of which  
27 I am aware, and there were many, were written in Garamond font.

28

- I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in San Francisco, California on November 19, 2012.

Frank M. Hinman